

MINUTES

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

Monday, October 2, 2000

Division One

**A086925 -- Citicorp North America, Inc. & Affiliates v. Franchise Tax Board**

Because the trial court's findings are supported by substantial evidence and the implementation of the rules was a valid exercise of the interpretive powers of the SBE, the judgment is affirmed. Marchiano, J. We Concur: Strankman, P.J., Stein, J. (Certified for Publication.)

Division Four

**A085555 -- Lew Warden et al. v. Rahmatulla Salimi.**

The purported appeals from the orders listed in the notice of appeal are dismissed. The judgment is affirmed. The parties shall bear their respective costs of appeal. Poché, J.\* We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

\*Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A086334 -- Lew Warden et al. v. Rahmatulla Salimi.**

The order is reversed. Poché, J.\* We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

\*Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, October 2, 2000 (continued)

Division Five

**A085437 -- The People v. Russ Archie Tye**

**A086610 -- The People v. Lewis Anthony Greene**

The judgments are affirmed. Rivera, J.\* We Concur: Jones, P.J., Stevens, J. (Certified for Partial Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Monday, October 2, 2000

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Stein, J, and Marchiano, J.; N. Millner, Deputy Clerk; and CHP Officer D. Gilson, Bailiff.

- A091785 Peter Wainwright,  
v.  
Superior Court of Humboldt County;  
Nancy Sinkler, et al.  
Cause called and argued by Elaine Profant-Turner, counsel for appellant, via teleconference, and Judith L. Edson, counsel for real parties in interest, via teleconference. Cause ordered submitted.
- A088673 In re Gary T.  
The People,  
v.  
Gary T.  
Cause called and argued by L. Richard Braucher, counsel for appellant, and Christopher Grove, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A089378 Guardianship of Olivia J.  
Karen Bernstein,  
v.  
Jennifer Jones.  
Cause called and argued by Jill Hersh, counsel for appellant, and Carol Amyx, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice Strankman left the bench and Justice Stein joined the bench. Justice Stein presided over the remainder of the session.

A087802 Liberty Insurance Corporation, et al.  
v.  
Hull & Company, Inc., et al.  
Cause called and argued by Lisa Kralik Hansen, counsel for appellant, and Angela Walsh, counsel for respondent. Cause ordered submitted.

A089325 The Boccardo Law Firm, et al.  
v.  
Parkwood Montclair Partners.  
Cause called and argued by John C. Stein, counsel for appellant, and Roger B. Irion, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Monday, October 2, 2000

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Swager, J., and Marchiano, J.; B. Robbins, Deputy Clerk; and CHP Officer J. Keirse, Bailiff.

- A087179 Calogera Lena Belliaro,  
v.  
Villa Hotel, et al.  
Cause called and argued by Bradley Kass, counsel for appellant, and Mark B. O'Connor, counsel for respondents. Cause ordered submitted.
- A089222 Ted Horwitz,  
v.  
Evoke Software Corporation.  
Cause called and argued by Roderick P. Bushnell, counsel for appellant, and John C. Fish, counsel for respondent. Cause ordered submitted.
- A089607 Cecilia F. Pinoli,  
v.  
Raymond Pinoli.  
Cause called and argued by James F. DeMartini, counsel for appellant, and Thomas F. Johnson, counsel for respondent. Cause ordered submitted.
- A089524 County of Sonoma, et al.,  
v.  
Commission on State Mandates, et al.  
Cause called and argued by Daniel G. Stone, Deputy Attorney General, counsel for appellants, and Steven M. Woodside, County Counsel, counsel for respondents. Cause ordered submitted.

Court adjourned.

Tuesday, October 3, 2000

Division One

**A088684 -- Lydia Camerino v. Foodmaker, Inc., et al.**

The judgment in favor of Camerino on the cause of action for negligent infliction of emotional distress is reversed. In all other respects, the judgment is affirmed. Each party is to bear their own costs on appeal. Swager, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

**A090181 -- Edward Shields v. Millie Miller.**

By the Court: Appellant having failed to file a brief after notice given under rule 17(a) of the California Rules of Court, the appeal is dismissed. Strankman, P.J.

**A092260 - In re Marriage of Michelle Drocco and Vernon Rook, Vernon Rook v. Michelle Drocco.**

By the Court: Appellant having failed to procure the record on appeal within the time allowed or within any valid extension of time, and having failed to show good cause for relief from default, the appeal filed August 15, 2000, is dismissed. (See Cal. Rules of Court, rule 10(c).) Strankman, P.J.

Division Two

**A092332 -- Joe Foster Excavating, Inc. v. The Superior Court of Contra Costa County, The Housing Group, R.P.I.**

By the Court: The petition for writ of mandate/prohibition is denied. Kline, P.J.

**A092544 -- In re Gary Eugene Kukes, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Petitioner should file challenges to his Butte County conviction in the Butte County Superior Court and then seek relief, if any, in the Third District. Petitioner's challenges to conditions of confinement must show exhaustion of administrative remedies. (*In re Muszalski* (1975) 52 Cal.App.3d 500.) Kline, P.J.

Tuesday, October 3, 2000 (continued)

**A092592 -- In re Manuel Ochoa, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

**A092613 -- In re James Pace, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

**A092624 -- In re Johnny Rodriguez, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Petitioner should seek relief, if any, in the Second District Court of Appeal in Los Angeles. Kline, P.J.

Division Four

**A089209 -- The People v. Jennifer Ann Dague.**

The order of probation is affirmed. Poché, J.\* We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

\*Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A089450 -- Julianne Major v. Tibor E. Major.**

**A089459 -- Amanda Major v. Tibor E. Major.**

We affirm the orders. Reardon, J. I concur: Hanlon, P.J. (Not for Publication.) (See Dissenting opinion by Sepulveda, J.)

Tuesday, October 3, 2000 (continued)

**A084310 -- The People v. Charles Anderson Miller.**

The judgment is modified by striking three one-year terms imposed pursuant to section 667.5, subdivision (b) and by reducing each of the fines assessed pursuant to sections 1202.4 and 1202.45 from \$36,000 to \$10,000. As modified the judgment of conviction is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment, and to forward a certified copy of the amended abstract to the Department of Corrections. Poché, J.\* We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

\*Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090472 -- Deanna R. Rutter v. The Superior Court of San Mateo County, Charles E. McClung, Jr., et al. R.P.I.**

Let a peremptory writ of mandate issue directing the superior court to vacate its order dated March 14, 2000, granting defendant McCloskey's motion to compel arbitration and defendant McClung's joinder motion to compel arbitration pursuant to Code of Civil Procedure section 1281.2, and enter a new order denying defendant McCloskey's motion to compel arbitration and defendant McClung's joinder motion to compel arbitration.

Real parties in interest shall bear the costs of this proceeding.

This opinion is final as to this court immediately. (Cal. Rules of Court, rule 24(d).) Poché, J.\* We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

\*Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A088022 -- Chrystal Tunstall v. The Regents of the University of California.**

We affirm the judgment. Reardon, J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

Tuesday, October 3, 2000 (continued)

Division Five

**A088760 -- RJS Timber Products, Inc. v. County of Sonoma et al.**

The judgment is modified to reflect that log storage on the subject property constitutes a permitted use. As so modified, the judgment is affirmed. The parties shall bear their respective costs on this appeal. Jones, P.J. We Concur: Stevens, J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, October 4, 2000

Division One

**A090564 -- The People v. Linda Jean Rivas.**

The judgment is affirmed. Marchiano, J. We Concur: Strankman, P.J., Swager, J. (Not for Publication.)

Division Two

**A089365 -- The People v. Enrique Tadeo Areas.**

Appellant's convictions are affirmed. The judgment is reversed, and the matter is remanded for resentencing. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A092041 -- Leslie Quick v. The Superior Court of Marin County, Paul Pollack, et al., R.P.I.**

By the Court: The petition for writ of mandate is denied. Kline, P.J.

**A087349 -- Robert Wagner v. Apex Marine Ship Management Corporation.**

The judgment is reversed and the matter is remanded to the trial court for further proceedings. Costs on appeal to appellant. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Certified for Publication.)

**A087237 -- Robert Wagner v. Moore McCormack Resources, Inc.**

The judgment is affirmed. Costs on appeal to respondent. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Wednesday, October 4, 2000 (continued)

Division Four

**A087809 -- Harry W. Low, as Insurance Commissioner, etc. v. World Title Company; Toros Avikian et al.**

Absent the means to prosecute their actions against the fiduciaries, appellants could not be aggrieved by the settlement. We therefore dismiss this appeal. Reardon, J. We concur: Hanlon, P. J., Sepulveda, J. (Not for Publication.)

**A086533, A087375 -- Charles Cuda v. Applied Risk Management, Inc., et al.**

The summary judgments are affirmed. Costs are awarded to Andler and ARM. Hanlon, P. J. We concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A084601 -- The People v. Anthony Thomas Cole.**

The judgment is affirmed. Poché, J.\* We concur: Hanlon, P. J., Sepulveda, J. (Not for Publication.)

\*Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Five

**A090206 -- In re Golden Eagle Insurance Company in Conservation of Assets. Harry W. Low, as Insurance Commissioner, etc. v. Golden Eagle Insurance Company et al.; Japan Medical Research of America, Inc.**

The orders of the trial court are affirmed. Stevens, J. We concur: Jones, P. J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, October 4, 2000 (continued)

**A089747 -- The People v. John Joseph Leonard.**

We affirm the judgment. Jones, P.J. We Concur: Stevens, J. , Rivera, J.\*  
(Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, October 5, 2000

Division One

**A088731 -- The People v. Marquis Madden.**

The judgment shall be corrected to state that appellant is awarded 134 days conduct credits. In all other respects, the judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Division Five

**A088257 -- Charles Janda v. Bruce Hoffman.**

The order is affirmed. Rivera, J.\* We concur: Jones, P.J., Stevens, J. (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090938 -- In re Christina S. et al., Persons Coming Under the Juvenile Court Law.**

The order appealed from is affirmed. Jones, P.J. We concur: Stevens, J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, October 6, 2000

Division Two

**A086643 -- People v. David Massette.**

The Judgment is affirmed. Haerle, J. We concur: Kline, P.J., Lambden, J.  
(Not for Publication.)

**A086769 -- People v. David Jesus Faris, Jr.**

The judgment is modified to stay the term imposed on count 6 for brandishing a firearm to avoid arrest (§ 417.8), pursuant to section 654, and to stay the firearm enhancements attached to counts 4, 6, 8, and 9. In all other respects the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and forward a copy thereof to the Department of Corrections. Lambden, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Five

**A089417 -- Charles R. Hockaday v. William R. Conklin.**

The order is affirmed. Jones, P.J. We Concur: Stevens, J., Rivera, J.\*  
(Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, October 10, 2000

Division One

**A089615 -- The People v. Joey Alcutt.**

The judgment is affirmed. Strankman, P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

**A087948 -- John Clifton Elstead v. Michael S. Pecherer.**

Accordingly, the appeal is dismissed. Costs on appeal are awarded to respondent. Swager, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

**A089607 -- Cecilia F. Pinoli v. Raymond Pinoli.**

The judgment is affirmed. Strankman, P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

**A088673 -- In re Gary T., a Person Coming Under the Juvenile Court Law.**

The order is affirmed. Strankman, P.J. We Concur: Stein, J., Marchiano, J. (Not for Publication.)

Division Two

**A092659 -- In re Muharem Kurbegovich, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

**A092648 -- Twin City Fire Insurance Company, et al. v. The Superior Court of Contra Costa County; Albert D. Seeno Construction Company, R.P.I.**

By the Court: The petition for writ of mandate is denied without prejudice as premature in that no written order has been signed by the trial court in compliance with Code of Civil Procedure section 437c, subdivisions (f) and (g). (See *Tera Pharmaceuticals, Inc. v. Superior Court* (1985) 170 Cal.App.3d 530,

532; *Continental Insurance Co. v. Superior Court* (1985) 165 Cal.App.3d 1069, 1071-1072; *Young v. Superior Court* (1986) 179 Cal.App.3d 28.) Kline, P.J.

Tuesday, October 10, 2000 (continued)

**A086152 -- Norcal Mutual Insurance Company v. Nancy Newton.**

The order denying the petition to compel arbitration is reversed. Kline, P.J.  
We Concur: Haerle, J., Lambden, J. (Certified for Publication.)

**A091827 -- Annelore Zalar v. The Superior Court of San Francisco  
County; Pacific Bell, R.P.I.**

By the Court: The petition for writ of mandate/prohibition is denied, and  
the temporary stay previously imposed of the trial court's order of June 28, 2000,  
is lifted. Kline, P.J.

Division Five

**A089700 -- A. Peter Evans et al. v. City of East Palo Alto; Charles  
Touchatt et al., R.P.I.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Rivera, J.\*  
(Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice  
pursuant to article VI, section 6 of the California Constitution.

**A086495 -- The People v. Trent R. Wacker.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Rivera, J.\*  
(Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice  
pursuant to article VI, section 6 of the California Constitution.

Wednesday, October 11, 2000

Division One

**A089840 -- Barbara Ryan v. YMCA.**

The release signed by appellant applied to the injury she suffered. Appellant produced no evidence to rebut the YMCA's showing that the case involved, at most, simple negligence. The summary judgment is affirmed. Marchiano, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

Division Four

**A089638 -- In re Lativis R., a person Coming Under the Juvenile Court Law.**

The dispositional order of the juvenile court is affirmed. Poché, J.\* We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

\*Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Wednesday, October 11, 2000

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Hanlon, P.J. and Sepulveda, J.; Channing Hoo, Deputy Clerk; Diane Gilson, Bailiff. Each counsel again waived Justice Reardon's presence on the bench.

- A088831 Margaret Brenner  
v.  
John Stanley Beverly IV et al.  
Cause called. Fred Feller argued for appellants Beverly et al. Bridget Childs argued for respondent. Cause submitted.
- A088516 George Theodore Priola et al.  
A088518 v.  
Fannie Jones  
Causes called. Kathleen Moura argued for appellant Jones. Stephen Kaus argued for respondents. Causes submitted.
- A089537 In re the Marriage of Walker  
Anthony J. Walker  
v.  
Kim E. McBride  
Cause called. Ann Riley argued for appellant McBride. Wallace C. Doolittle argued for respondent. Cause submitted.
- A088919 Douglas Sutherland et al.  
v.  
City of Fort Bragg  
Shortly before this date, the court granted a motion to continue this hearing to the October 24, 2000 calendar.

The Court adjourned at 10:17 a.m.

Thursday, October 12, 2000

Division Two

**A089388 - In re Brandi J., a Person Coming Under the Juvenile Court Law.**

We affirm the order of the court following the December 8, 1999 review hearing. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A089703 -- Marci A. Raney v. The California Department of Developmental Services.**

The award of attorney fees and costs is set aside and the matter is remanded for further proceedings consistent with this opinion. The denial of the motion to compel documents is affirmed. No party is awarded costs on appeal. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

**A092662 -- In re Anthony Brown, on Habeas Corpus.**

By the Court: The petition for a writ of habeas corpus is denied. McGuinness, Acting P.J. (Corrigan, J. & Walker, J. participating.)

**A091305 -- Jerry Brown, as Mayor, etc. v. Fair Political Practices Commission.**

Let a peremptory writ of mandate issue commanding the FPPC to withdraw its opinion. The FPPC need not issue another opinion authorizing the mayor's participation in the Lower Broadway Project; our decision is sufficient for that purpose. The parties shall bear their own costs. Parrilli, J. We Concur: McGuinness, P.J., Walker, J. (Certified for Publication.)

**A092702 -- In re Cleotha Jones, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. The issues raised in the petition were previously considered and rejected by the court in conjunction with a petition for a writ of mandate in A092545, filed by petitioner on September 25, 2000, and denied by this court on September 26, 2000. Corrigan, Acting P.J. (Parrilli, J. participating.)

Thursday, October 12, 2000 (continued)

Division Five

**A088191 -- In re the Marriage of Robert and Patricia Lawson.**

The orders appealed from are affirmed. Costs are awarded to respondent.  
Rivera, J.\* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, October 13, 2000 (continued)

Division Two

**A089026 -- George C. Bourekas v. Harry W. Low, as Insurance Commissioner.**

The judgment is affirmed. Haerle, Acting P.J. . We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A087805 -- California-Nevada Annual Conference of the United Methodist Church, et al. v. John Jones, et al.**

By the Court: The petition for rehearing is denied. Kline, P.J.

**A092705 -- William Gilchrist v. The Superior Court of Sacramento County; The People of the State of California, R.P.I.**

By the Court: The petition for writ of mandate/prohibition is denied. Petitioner should seek relief, if any, in the Third District Court of Appeal in Sacramento. Kline, P.J.

**A088433 -- In re Justice Curtis M., a Person Coming Under the Juvenile Court Law.**

The order terminating mother's parental rights to Justice Curtis M. is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A092683 -- In re Clair Quinnine, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

Friday, October 13, 2000 (continued)

Division Two

**A087298 -- Suhair Shahwan v. Gheorghe M. Vlad et al.**

Vlad was an independent contractor as a matter of law. No material issues of fact are in dispute, and summary judgment was properly entered. The judgment is affirmed and respondents shall recover their costs on appeal. Lambden, J. We Concur: Kline, P.J., Ruvolo, J.

Division Three

**A086653 -- The People v. John Paul Jacobs.**

**A090336 -- In re John Paul Jacobs.**

The judgment is reversed. The habeas corpus petition is dismissed as moot. Parrilli, J. We Concur: Corrigan, Acting P.J., Walker, J. (Not for Publication.)

Division Four

**A089787 -- The People v. Edwin Wheelock.**

The order is reversed. Woolard, J.\* We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Five

**A087558 -- In re Golden Eagle insurance Company in Conservation of Assets.**

The orders are affirmed. Costs are awarded to respondents. Rivera, J.\* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, October 16, 2000 (continued)

Division One

**A086536 -- The People v. Michael Dixon.**

By the Court: The petition for rehearing is denied. Strankman, P.J.

**A090227 -- The People v. Darnell Jackson.**

The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

**A088909 -- The People v. Lee Stewart.**

By the Court: The petition for rehearing is denied. Strankman, P.J.

**A089325 -- The Boccardo Law Firm et al. v. Parkwood Montclair Partners.**

The judgment of dismissal is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Four

**A088864 -- The People v. Nehemiah Joseph Killingsworth.**

The judgment is affirmed. Hanlon, P.J. We Concur: Reardon, J., Sepulveda, J.

Division Five

**A087333 -- Wendi L. Harris v. Lois M. Lammers.**

The judgment is reversed to the extent that it awards Harris damages for noneconomic injuries. In all other respects the judgment is affirmed. The case is remanded to the trial court for further proceedings consistent with this opinion. Both parties shall bear their own costs on appeal. Jones, P.J. We Concur: Stevens, J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, October 17, 2000

Division One

**A089378 -- In re Guardianship of Olivia J.**

The judgment is reversed, and the matter is remanded to trial court for further proceedings consistent with the view expressed in this opinion. Costs to appellant. Stein, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Division Two

**A092752 -- Charlie Mae Knight v. The Superior Court of San Mateo County; The People of the State of California, R.P.I.**

By the Court: Pending determination of the petition on file herein, and subject to further order of this court, the trial in *People v. Charlie Mae Knight*, San Mateo Superior Court Case No. SC-47469, is temporarily stayed. Kline, P.J.

**A092760 -- Henry Van Buren, et al. v. Keith Lennon, et al.**

The petition for writ of supersedeas/stay is denied. With respect to petitioners' contentions concerning the denial of their Code of Civil Procedure section 170.6 peremptory challenge, Code of civil Procedure section 170.3, subdivision (d), prescribes the exclusive means of appellate review of an unsuccessful peremptory challenge motion, and petitioners' challenge is untimely. (*People v. Hull* (1991) 1 Cal.4th 266, 276.) Kline, P.J.

**MINUTES**

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

DIVISION FIVE

Tuesday, October 17, 2000

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J.; Rivera, J., on assignment by the Chief Justice and Richard H. Sandvik, Deputy Clerk.

A087612 Gary Terwilliger

A089976 v.

Marin Municipal Water District

Cause called and argued by Elizabeth A. Reifler, counsel for appellant arguing by telephone conference call, and by David P. Freitas, counsel for respondent. Cause ordered submitted.

A088714 Maxima Carolina Rodriguez

v.

ABM Industries, Inc., et al.

Cause called and argued by Gary O. Alexander, counsel for appellant. Counsel for respondent did not appear. Cause ordered submitted.

A089296 Matt Van Hart

v.

Berryman Products, Ind.

Cause called and argued by Lyle Sinell, counsel for appellant and by Joan Wolff, counsel for respondent. Cause ordered submitted.

A084853 James Porter et al.

v.

Laci Le Beau et al.

Cause called and argued by Christopher E. Grell, counsel for appellants and by Donald W. Carlson, counsel for respondents. Cause ordered submitted.

A088474 Vickie P. Smith

v.

Kaiser Foundation Health Plan et al.

Cause called and argued by Gary T. Lafayette, counsel for respondent. Counsel for appellant did not appear. Cause ordered submitted.

- A089133 Virginia Menge  
v.  
Sally Reed, as Director of the Department of Motor Vehicles  
Cause called and argued by Christine B. Mersten, Deputy Attorney General, counsel for appellant arguing by telephone conference call and by Peter Goodman, counsel for respondent. Cause ordered submitted.
- A090492 Insurance Commissioner of the State of California  
v.  
Golden Eagle Insurance Company  
Jack Snyder  
Cause called and argued by Malcolm R. Tator, counsel for appellant and by Kelly K. Beck, counsel for respondent. Cause ordered submitted.
- A088120 The People  
v.  
William Andrew Pillars  
Cause called and argued by Eric M. Weaver, counsel for appellant and by Aileen Bunney, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A087675 The People  
v.  
Jeffrey Martin Williams  
Cause called and argued by Victoria H. Stafford, counsel for appellant and by Karl Mayer, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A087942 In re Alex H., a Person Coming Under Juvenile Court Law  
The People  
v.  
Alex H.  
Cause called and argued by Johathan D. Soglin, counsel for appellant and by Karl Mayer, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A092348 Bennie H.  
v.  
The Superior Court  
Social Services Agency  
Cause called and argued by William B. Cater, counsel for petitioner, arguing by telephone conference call, and by Richard Hendry counsel for real parties in interest, arguing by telephone conference call. Cause ordered submitted.

Court adjourned at 1:26 p.m.

Wednesday, October 18, 2000

Division One

**A087179 -- Calogera Lena Belliardo v. Belle Haven Realty Company.**

Accordingly, the judgment is affirmed. Costs on appeal are awarded to respondent. Swager, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

**A085506 -- Denise Hale, et al. v. Prentis Cobb Hale, III.**

By the Court: The petition for rehearing is denied. Strankman, P.J.

**A089222 -- Ted Horwitz v. Evoke Software Corporation.**

Appellant failed to rebut the employer's showing on summary judgment. The summary judgment is affirmed. Marchiano, J. We Concur: Strankman, P.J., Swager, J. (Not for Publication.)

**A092618 -- Ganice Morgan v. Kutol Products, Inc.**

By the Court: Appellant having failed to pay the statutory filing fee in compliance with rule 1(c) of the California Rules of Court, after notice having been given pursuant to rule 10(a), the appeal filed on September 18, 2000 is dismissed. Strankman, P.J.

Division Two

**A089019 -- Children's Cross-Cultural Communications Foundation v. Rini, Coran & Lancellotta.**

We affirm. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Wednesday, October 18, 2000 (continued)

Division Three

**A089118 -- Larry Jensen et al. v. Koll Construction.**

The summary judgment is affirmed. Respondent shall recover its costs on appeal. Walker, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

**A084108 -- The People v. Johnny Harvey Radford, Jr.**

The conviction on Count VI is reversed, and the award of custody credit is vacated. At resentencing, the trial court is directed to recalculate Radford's conduct credit as discussed in Part 6, *ante*. The judgment is otherwise affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Walker, J. (Not for Publication.)

Division Four

**A085476 -- Daniel Cervantes et al. v. Pacific Gas & Electric Company.**

The judgment is affirmed. Sepulveda, J. We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

Division Five

**A089794 -- The People v. Gabriel Alfaro.**

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A089789 -- The People v. Rafael Hernandez Correa.**

The judgment of conviction and sentence are affirmed. Stevens, J. We Concur: Jones, P.J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, October 18, 2000 (continued)

Division Five

**A089234/A091060 -- In re Joshua F. et al., Persons Coming Under the Juvenile Court Law.**

**Lake County Department of Social Services, v. Vernon F. et al.**

The orders of the juvenile court are affirmed. Stevens, J. We Concur:  
Jones, P.J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, October 19, 2000

Division One

**A090201 -- Board of Attorneys v. Charles W. Opptiz.**

Accordingly, the judgment is affirmed. Costs on appeal are awarded to respondent. Swager, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Division Two

**A090199 -- The People v. Gerald Charles Radtke.**

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Division Five

**A092121 -- Trina J. v. The Superior Court of Del Norte County; Del Norte County Department of Health and Social Services., R.P.I.**

The order to show cause is discharged, and the petition for extraordinary writ review is denied on its merits. (Cal. Const., art. VI, § 14; rule 39.1B(o); *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Petitioner is barred in any subsequent appeal from making further challenges to the orders denying reunification services and setting a hearing under section 366.26. (§ 366.26, subd. (I).) Because the section 366.26 hearing is set for October 27, 2000, our decision is final as to this court immediately. (Rule 24(a).) Rivera, J.\* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A087612/A089976 -- Gary Terwilliger v. Marin Municipal Water District.**

The judgment and orders of the trial court are affirmed. Stevens, J. We Concur: Jones, P.J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, October 20, 2000

Division One

**A091785 -- Peter Wainwright v. The Superior Court of Humboldt County; Nancy Sinkler, R.P.I.**

Let a peremptory writ of mandate issue directing the superior court to vacate its order compelling petitioner to submit to drug testing. Our stay previously entered shall remain in effect pending issuance of the remittitur. Petitioner is entitled to costs. Strankman, P.J. We Concur: Stein, J., Marchiano, J. (Certified for Publication.)

**A088862 -- The People v. Eric Ray Clark.**

The judgment of the trial court is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**2 A090132 -- In re Christopher H., a Person Coming Under the Juvenile Court Law.**

The appeal is dismissed without reaching its merits because the issues have been rendered moot. Each party to bear its own costs. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Four

**A088653, A088656 -- Adoption of Aaron H., a Minor.  
Richard M. v. Alexas H., et al.**

The order is affirmed. Hanlon, P.J. We Concur: Sepulveda, J., Woolard, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, October 20, 2000 (continued)

**A092348 -- Bennie Ray H. v. The Superior Court of Humboldt County;  
Humboldt County Department of Social Services, R.P.I.**

The motion to augment the record is granted. The order to show cause is discharged. The request for a stay is denied.

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) Because the section 366.26 hearing is now set for November 13, 2000, our decision is final in this court immediately. (Cal. Rules of Court, rule 24(d).) Stevens, J. We Concur: Jones, P.J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, October 23, 2000

Division One

**A088439 -- City & County of San Francisco v. Patrick Barnett.**

The child support order is reversed and the case is remanded to the trial court for recomputation in accordance with the mandate of section 4071.5. In the interests of justice the parties shall bear their own costs on appeal. Swager, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

**A086147 -- H. Lee Evans. v. Reliance National Insurance Company.**

Appellant's motion to file late petition for rehearing is denied. Strankman, P.J.

**A091065 -- The People v. David Ray Hacker.**

The judgment is affirmed. Strankman, P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Division Two

**A090897 -- The People v. Richard Wayne Harris.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A089977 -- In re Brianna P., a Person Coming Under the Juvenile Court Law.**

The visitation portion of the order of the juvenile court is reversed, and the cause is remanded to the family court, which shall direct the matter transferred to the superior court for the county in Hawaii where father resides (§ 362.4) to modify the visitation provisions consistent with this opinion (*John W., supra*, 41 Cal.App.4th at p. 977) and in light of any evolving circumstances. The order is in all other respects affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Monday, October 23, 2000 (continued)

**A092779 -- Ranger Insurance Company v. The Superior Court of Sonoma County, The People of the State of California, R.P.I.**

By the Court: The underlying appeal in People v. Ranger Insurance Company, A085509, having been directed to the appellate division of the superior court, the petition for writ of mandate is dismissed as moot. Kline, P.J.

**A086896 -- Estate of Theodore Schmidt., Deceased.**

The orders appealed from are affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Division Four

**A083797 -- The People v. Thomas Lester Stark.**

The judgment is modified to strike the order requiring appellant “to honor all civil judgments.” In all other respects, the judgment, as modified, is affirmed. Hanlon, P.J. I concur: Reardon, J. (Not for Publication.) (See dissenting Opinion by Poché, J.\*)

\*Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Five

**A089296 -- Geraldine Hart, as Co-executor, etc., et al. v. Berryman Products of Texas, Inc.**

The judgment of dismissal is affirmed. Stevens, J. We Concur: Jones, P.J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, October 23, 2000 (continued)

**A086128 -- The People v. Eugene Jones.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090277 -- The People v. Walter Ray Meeks, Jr.**

The order revoking probation and imposing appellant's stayed prison commitment is affirmed. Stevens, J. We Concur: Jones, P.J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A088120 -- The People v. William A. Pillars.**

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A091264 -- The People v. Scott William Ryall.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, October 24, 2000

Division Two

**A086471 -- The People v. Michael James Flores.**

The conviction for forcible oral copulation is reversed. The remaining convictions are affirmed. Because reversal of this conviction may invalidate the entire sentencing scheme, on remand, the court “clearly has discretion to increase or decrease elements of the sentence (although there may be limits on its ability to increase the aggregate sentence). [Citation.]” (*People v. Garcia* (1995) 32 Cal.App.4th 1756, 1769; see generally *People v. Begnaud* (1991) 235 Cal.App.3d 1548, 1554.) The case is remanded for further proceedings in accordance with this opinion. Ruvolo, J. I concur: Haerle, J. (Not for Publication.) (See Concurring Opinion by Kline, P.J.)

**A088828 -- Noel McAvinney et al. v. Wilson Scaffolding and Construction Company.**

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Division Three

**A092124 -- Lee Ann C. v. The Superior Court of Napa County; Napa County Health and Human Services et al., R.P.I.**

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Since the permanency planning hearing is set for November 14, 2000, our decision is immediately final as to this court. (Rule 24(d).) Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

Wednesday, October 25, 2000

Division One

**A091064 -- In re Jacqueline A., a Person Coming Under the Juvenile Court Law.**

The trial court sustained the allegations of the petition and stated that the maximum period of confinement was three years and eight months. After a dispositional hearing, the court adjudged appellant a ward of the court, granted probation subject to numerous conditions, made a finding under Welfare and Institutions Code section 726, subdivision (c), that removal from parental custody was necessary, and ordered her detained pending placement at the Chris Adams Center. Finding no arguable issues, we affirm the order. Strankman, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

**A090664 -- Brent Gilbert, et al. v. National Old Times Rodeo Association, Inc., et al.**

The order quashing service is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Division Two

**A092762 -- Sanford I. Gossman v. The Superior Court of San Francisco County, Elizabeth Maynard, R.P.I.**

By the Court: The petition for writ of mandate is denied. Kline, P.J. (Not for Publication.)

**A088761 -- The People v. Alfred Lawrence Jackson.**

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

**A090713 -- Aaron L'Hoir v. J & M Towing.**

The appeal is dismissed. Kline, P.J.

Wednesday, October 25, 2000 (continued)

**A092687 -- Holy Redeemer Lutheran Church v. The Superior Court of Alameda County; Douglas Dane, et al. R.P.I.**

By the Court: The petition for writ of mandate/prohibition is denied.  
Kline, P.J.

**A090228 -- The People v. Jose Alberto Pulido Nunez.**

Accordingly the judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

**A090659 -- The People v. Maria Magdalino Torres.**

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Division Four

**A088831 -- Margaret Brenner et al. v. John Stanley Beverly IV et al.**

The judgment is affirmed. Hanlon, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A085065 -- The People v. Juan Miguel Cisneros.**

The judgment is reversed and the case is remanded to permit the trial court to exercise its discretion in determining if deferral is appropriate in this case.  
Hanlon, P.J. We Concur: Sepulveda, J., Poché, J.\* (Certified for Publication.)

\*Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, October 25, 2000 (continued)

**A082341 -- The People v. Jose Ramon Garcia.**

The judgment is affirmed. Poché, J.\* We Concur: Hanlon, P.J., Reardon, J. (Certified for Partial Publication.)

\*Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A082437 -- George Heiner v. Kmart Corporation.**

For all the foregoing reasons, the judgment of the trial court is affirmed in its entirety, Costs to respondent. Sepulveda, J. We Concur: Hanlon, P.J., Poché, J.\* (Certified for Publication.)

\*Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A087840 -- National American Insurance Company v. City of Santa Rosa.**

The order of dismissal is affirmed. Sepulveda, J. We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

**A087507 -- The People v. David Phillips,**

**A090501 -- In re David Phillips, on Habeas Corpus.**

This order to show cause is to be served and filed forthwith. It shall be deemed served upon mailing by the clerk of this court of certified copies of this order to all parties to this proceeding and to respondent court. Sepulveda, J. We Concur: Hanlon, P.J., Woolard, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution

STATE OF

COURT OF APPEAL  
CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

October 25, 2000

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuinness, P.J., Corrigan, J., Parrilli, J., and I. Calanoc, Deputy Clerk.

- A089366      The People,  
                  v.  
                  Joni Robin Shultis.  
Cause called and argued by Ozro Childs, counsel for appellant (via teleconference), and Deputy Attorney General Rene Chacon, counsel for respondent. Cause ordered submitted.
- A088406      The People,  
                  v.  
                  William Lockard Milano.  
Cause called and argued by Donald Segerstrom, counsel for appellant (via teleconference), and Deputy Attorney General Kelly Cross, counsel for respondent. Cause ordered submitted.
- A089470      Victorian Preservation Center of  
                  Oakland,  
                  v.  
                  The County of Alameda, et al.  
Cause called and argued by Steven Morger, counsel for appellant, and Deputy Attorney Counsel John Ketelsen, counsel for respondents. Cause ordered submitted. McGuinness, P.J. left the bench after this case.

A086736 Alice Lane,  
v.  
City and County of San Francisco.  
Justice Corrigan informed both counsel of Justice Walker's absence from the court. Both counsel agreed that Justice Walker's access to the taped proceedings of this case is satisfactory. Cause called and argued by William Balin, counsel for appellant, and Deputy City Attorney Daniel Bernhard, counsel for respondent. Cause ordered submitted.

A090342 In re Alan Cluff on Habeas Corpus.  
A086125 The People,  
v.  
Alan Ross Cluff.  
Justice Corrigan informed both counsel of Justice Walker's absence from the court. Both counsel agreed that Justice Walker's access to the taped proceedings of this case is satisfactory. Cause called and argued by William Such, counsel for appellant, and Deputy Attorney General Rene Chacon, counsel for respondent. Cause ordered submitted.

A088724 John A. Roberts,  
A088726 Timothy B. Manning,  
A088730 Tony W. Jones,  
v.  
Hutka Mini Storage, et al.  
The panel for this case is comprised of Corrigan, J., Parrilli, J., and Walker, J. Justice Walker is not present. Cause called and argued by Tony Tanke, counsel for appellants, and Joseph Joiner, counsel for respondents. Cause ordered submitted.

COURT ADJOURNED

Thursday, October 26, 2000

Division One

**A090593 -- Kevin R. Carter v. Patrick F. Carter, et al.**

By the Court: Appellant having failed to file a brief after notice given under rule 17(a) of the California Rules of Court, the appeal is dismissed. Strankman, P.J.

**A092072 -- Richard E. Flamm v. Ann McFarland Draper.**

By the Court: Appellant having failed to file a brief after notice given under rule 17(a) of the California Rules of Court, the appeal is dismissed. Strankman, P.J.

**A087802 -- Liberty Insurance Corporation et al. v. Commercial Underwriters Insurance Company et al.**

The judgment is reversed insofar as it grants Commercial Underwriters Insurance Company recovery of \$750,000 on its cross-complaint and is otherwise affirmed. Each party shall bear its own costs. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

Division Two

**A081707 -- Philip Dean Dubaldi, a Minor, etc., et al. v. Glenbrook Laboratories.**

The judgment is affirmed. Costs are awarded to plaintiff. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

**A085979 -- Richard Michalowski et al. v. Fire Insurance Exchange.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Thursday, October 26, 2000 (continued)

**A085459 -- Joy Oriola v. Adam Thaler.**

The trial court's order dismissing the application for injunctive and other relief under the DVPA is affirmed. Respondent's request for sanctions is denied. Costs to respondent. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Certified for Publication.)

**A085469 -- Donald A. Paton v. State of California et al.**

This appeal is dismissed without reaching its merits for lack of appellate jurisdiction. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A083986 -- The People v. Thomas Wheeler.**

The judgment is reversed as to counts 8 and 9. In all other respects the judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Division Three

**A091163 -- In re Deborah G., a Person Coming Under the Juvenile Court Law.**

We see no abuse of discretion. The judgment is affirmed. McGuinness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

**A088292 -- Elliot C. Kwok v. Desli Lawrence et al.**

The judgment is affirmed. Appellant to bear costs of appeal. McGuinness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

**A085717 -- Pacific Bay Service Corporation v. Wayne E. Bloomquist.**

The judgment is affirmed. Corrigan, J. We Concur: McGuinness, P.J., Walker, J. (Not for Publication.)

Thursday, October 26, 2000 (continued)

**A088985 -- Pacific Bell v. Covad Communications.**

Upon stipulation of the parties, the judgment below is vacated. The matter is remanded and the trial court is directed to vacate the arbitration award. Corrigan, Acting P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

**A090473 -- Supercom, Inc. v. Karel C. Zimardo.**

The judgment is affirmed. Appellant to bear costs of appeal. McGuinness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Four

**A089389 -- In re Lysie D., a Person Coming Under the Juvenile Court Law.**

The order is affirmed. Woolard, J.\* We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A089305 -- The People v. Byron Edward Golden, Jr.**

The judgment is affirmed. Hanlon, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A088683 -- The People v. Derek Martin Jones.**

The order is affirmed. Woolard, J.\* We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, October 26, 2000 (continued)

**A087951 -- Michael Miltner et al. v. State of California.**

The judgment of dismissal is reversed. The order of the trial court granting summary adjudication of issues is affirmed. Poché, J.\* We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

\*Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A088565 -- The People v. Terry Lynne Vernon.**

We affirm the judgment. Reardon, J. We Concur: Hanlon, P.J., Woolard, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090104 -- In re Derek W., et al., a Persons Coming Under the Juvenile Court Law.**

The juvenile court orders are affirmed. Reardon, J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

Division Five

**A088690 - The People v. Jeong Kang.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A088884 -- In re Cameron M., a Person Coming Under the Juvenile Court Law.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, October 27, 2000

Division One

**A092351 -- Carole D. v. The Superior Court of Marin County; Marin County Department of Health and Human Services, R.P.I.**

No abuse of discretion appears in the trial court's denying the mother's section 388 petition and setting the section 366.26 hearing.

The petition for writ of mandate, prohibition or other appropriate relief is denied. Marchiano, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

**A090393 -- McDowell & Company v. TIG Insurance Company.**

The motion filed August 19, 2000 to dismiss the above-captioned appeal is granted. Strankman, P.J.

Division Two

**A092851 -- In re Charles Jackson, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

**A087349 -- Robert Wagner v. Apex Marine Ship Management Corporation et al.**

Modification of Opinion and Denial of Rehearing. The Court: It is ordered that the opinion filed herein October 4, 2000, be modified as follows. (See order.) Respondents' petition for rehearing is denied. Kline, P.J. (Certified for Publication.)

Friday, October 27, 2000 (continued)

Division Three

**A089857 -- John Minster v. Contadina Food, Inc.**

We hold that for the policy reasons expressed in *Privette v. Superior Court* (1993) 5 Cal.4th 689 and *Toland v. Sunland Housing Group* (1998) 18 Cal.4th 253, an employee of an independent contractor may not pursue a claim for negligent hiring against a hirer of the independent contractor because the hirer's duty to third parties to hire a "competent and careful contractor" does not extend to employees of independent contractors. We affirm the trial court's finding that Minster failed to create any triable issue of material fact to sustain his claim against Contadina for negligently retained control of work premises. The summary judgment entered for Contadina is affirmed; it shall recover its costs on appeal. Walker, J. We Concur: McGuinness, P.J., Corrigan, J. (Certified for Publication.)

Division Four

**A089318 -- In re Anthony D., a Person Coming Under the Juvenile Court Law.**

The orders denying the section 388 motion and terminating appellant's parental rights are affirmed. Hanlon, P.J. We Concur: Reardon, J., Woolard, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, October 27, 2000 (continued)

**A088481 -- In re Jonathan E., a Person Coming Under the Juvenile Court Law.**

The minor was represented by counsel and received a fair hearing. Substantial evidence supports the juvenile court's finding as to the residential burglary. There was no error in the disposition. There are no meritorious issues to be argued on appeal. The orders declaring that the minor continued to be a ward of the court and committing him to the California Youth Authority are affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Woolard, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A091110 -- In re Natalie J.G. et al., Persons Coming Under the Juvenile Court Law.**

The order of the trial court determining that reasonable reunification services were offered during the period from December 23, 1999 to April 6, 2000, is affirmed. Sepulveda, J. We Concur: Hanlon, P.J., Woolard, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution .

**A087942 -- In re Alex H., a Person Coming Under the Juvenile Court Law.**

The order to unseal appellant's juvenile records and refer the matter to San Mateo County is reversed and the matter is remanded with directions to reinstate the sealing order of July 24, 1998. Jones, P.J. We Concur: Stevens, J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, October 30, 2000

Division One

**A086147 -- H. Lee Evans v. Reliance National Insurance Company.**

By the Court: Due to clerical error and inadvertence, the opinion in the above-captioned appeal was file-stamped with the date "September 20, 2000," when in fact the opinion was filed on September 21, 2000. The first page of the opinion is modified to reflect the correct filing date of September 21, 2000.

Strankman, P.J.

Division Two

**A088007 -- Chong Hing, Inc. v. City and County of San Francisco.**

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J.

**A092856 -- In re John M. Ray, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

**A088547 -- The People v. Howard Zaniel Roary.**

The judgment appealed from is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

**A091975 -- Cammerin Boyd, et al. v. State of California, et al.**

The appeal is dismissed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

**A084788 -- The People v. David Elmer Gaul.**

The judgment is reversed. Corrigan, Acting P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

Monday, October 30, 2000 (continued)

Division Four

**A080542 -- The People v. Christine Loyd.**

By the Court: Defendant's petition for rehearing is denied. Except as stated below, defendant's petition for modification is also denied. The opinion heretofore filed is modified as follows: (See order.) The above modification does not effect any change in the judgment. Hanlon, P.J. (Certified for Partial Publication.)

Division Five

**A089186 -- The People v. Belquis Amin.**

The order requiring appellant to pay restitution is affirmed. Jones, P.J. We Concur: Stevens, J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090999 -- The People v. Melvin Leroy Spain, Jr.**

The judgment is affirmed. Rivera, J.\* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Monday, October 30, 2000

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kline, P.J., Haerle, J., Ruvolo, J. and S. Graham, Deputy Clerk

- A091294 In re Diane Bellas, Public Defender of Alameda County,  
on Habeas Corpus.  
Cause called and argued by Catherine Rivlin, Deputy Attorney General, counsel for respondent and Charles M. Denton, Assistant Public Defender, counsel for petitioner. Cause ordered submitted.
- A082334 The People  
v.  
Raymond Joseph Reiter  
Cause called and argued by David Stanley, counsel for appellant and Bridget Billeter, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A085058 The People  
v.  
John Anthony Crosthwaite
- A089888 In re John Anthony Crosthwaite  
on Habeas Corpus  
Causes called and argued by Janice Brickley, counsel for appellant and John Deist, Deputy Attorney General, counsel for respondent. Causes ordered submitted.
- A089785 Chicago Title Company  
v.  
Kenneth M. Bareilles, et al.  
Cause called and argued by Rudolph Kraft, counsel for appellant and (telephonically) by Philip M. Arnot, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened in its courtroom at 1:30 p.m. Present: Kline, P. J., Haerle, J., Lambden, J. and S. Graham, Deputy Clerk.

A089525 Brian H. Johnston  
v.  
SRI International, Inc.  
Cause called and argued by Marcia Pope, counsel for appellant and Judy Johnson, counsel for respondent. Cause ordered submitted

At this point in the proceedings, Justice Lambden left the bench and Justice Ruvolo joined the bench.

A088691 The People  
v.  
David Allen Perez  
Cause called and argued by Randi Covin, counsel for appellant and Gregory Ott, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A084907 The People  
v.  
James Samuel Kor, Jr.  
Cause called and argued by David Stanley, counsel for appellant and Joan Killeen, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A089339 Diversified Equity Holdings  
v.  
Dean Witter Reynolds  
Cause called and argued by Albert E. Cordova, counsel for appellant and Robert Sullwold, counsel for respondent. Cause ordered submitted.

Court recessed until Tuesday, October 31, 2000 at 9:30 a.m.

Tuesday, October 31, 2000

Division One

**A088932 -- Albert G. Hinds et al. v. Law Offices of Miles & Brummitt et al.**

The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

**A088673 -- In re Gary T., a Person Coming Under the Juvenile Court Law. The People v. v. Gary T.**

By the Court: The petition for rehearing is denied. Strankman, P.J.

**A086945 -- The People v. Jessie Roy Wells.**

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Division Two

**A081931 -- California State Automobile Association Inter-Insurance Bureau v. Parichan, Renberg, Crossman & Harvey.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Certified for Partial Publication.)

**A087932 -- The People v. Bismark Ortega.**

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Certified for Partial Publication.)

**A092106 --Elnora Terrell v. The Superior Court of Alameda County; Marian Allred, R.P.I.**

By the Court: The trial court having granted petitioner's application for fee waiver as to sheriff and marshal fees, the petition for writ of mandate is dismissed as moot. Haerle, Acting P.J.

Tuesday, October 31, 2000 (continued)

Division Three

**A089545 -- Garrie Westbrook v. Dorothy Schwarze.**

The order is affirmed. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

Division Four

**A091209 -- The People v. Robert Lee Canulli.**

The order permanently revoking appellant's probation and executing appellant's previously stayed prison term is affirmed. Reardon, J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

**A087928 -- The People v. Wayne Herbert Collins.**

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Woolard, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A084090, A084249 -- The People v. David W. Danielson et al.**

The parole revocation fines in the amount of \$10,000 pursuant to Penal Code section 1202.45 imposed on David Danielson and Gary Danielson are each stricken. Otherwise, the judgments are affirmed. Sepulveda, J. We Concur: Hanlon, P.J., Woolard, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A089177 -- The People v. Santiago Chavez Franco.**

The judgment is affirmed. Reardon, J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

Tuesday, October 31, 2000 (continued)

**A087494 -- The People v. Joshua Harvest.**

That portion of the restitution order allowing the claim of \$5,500 is reversed. The judgment of conviction and the restitution order are affirmed in all other respects. Hanlon, P.J. I concur: Reardon, J. (Certified for Publication.) (See dissenting opinion by Poché, J.)\*

\*Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A088516 and A088518 -- George Theodore Priola et al. v. Fannie Jones, as Executor, etc.**

The judgment is affirmed. Sepulveda, J. We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

**A089295 -- Rex Richardson et al. v. Tutor-Saliba Corporation et al.**

The purported appeal from the order denying the motion for new trial is dismissed. The summary judgment is reversed. Plaintiffs shall recover their costs on appeal. Poché, J.\* I Concur: Reardon, Acting P.J. (Not for Publication.) (See dissenting opinion by Sepulveda, J.)

\*Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090506 -- The People v. Donley Thompson.**

The judgment is affirmed. Sepulveda, J. We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

Tuesday, October 31, 2000 (continued)

Division Five

**A087912 -- The People v. Leo Samuel Archer.**

The trial court is ordered to prepare and to forward to the appropriate supervising authorities, amended minutes showing that appellant's probation is to terminate on April 9, 2002. In all other respects, the judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Rivera, J.\* (Not for Publication.)

\*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Tuesday, October 31, 2000

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kline, P. J., Lambden, J., Ruvolo, J. and I. Santos, Deputy Clerk.

A086974 Adham Ayesh,  
v.  
Fatima Ayesh et al.  
Cause called and argued by Jon B. Eisenberg, counsel for appellant, and Ellen Lake, counsel for respondent. Cause ordered submitted.

A080369 City of Martinez et al.,  
v.  
Workers' Compensation Appeals Board;  
Rhonda Bonito.  
Cause called and argued by Robert Cavallero, counsel for petitioner, and Mark E. Gearheart, counsel for respondent. Cause ordered submitted.

A088711 Mason Todd et al.,  
v.  
Exxon Corporation.  
Cause called and argued by William Armstrong, counsel for appellant, and Lloyd LeRoy, counsel for respondent. Cause ordered submitted.

A090054 Sherry Donahoo et al.,  
v.  
Bill Buchner.  
Cause called and argued by Virdeh Abraham, counsel for appellant, and Dennis Murphy, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened in its courtroom at 1:30 p.m. Present: Haerle, Acting P.J., Lambden, J., Ruvolo, J. and I. Santos, Deputy Clerk.

A089303 The People,

v.

Patrick Sherwood.

Cause called and argued by Kathleen Kahn, counsel for appellant, and Jill Thayer, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A088951

Cherie C. Anderson,

v.

Joyce C. Chisholm et al.

Cause called and argued by Robert Brown, counsel for appellant, and Lois Anne Lindstrom, counsel for respondent. Cause ordered submitted.

A089488

James Chaffee,

v.

San Francisco Library Commission.

Cause called and argued by James Chaffee, in propria persona, and Wayne Snodgrass, counsel for respondent. Cause ordered submitted.

A088706

Aaronson, Dickerson, Cohn & Lanzone,

v.

Janet Yip.

Cause called and argued by Janet Yip, in propria persona, and Marc Zafferano, counsel for respondent. Cause ordered submitted.

A087107

Fairhaven Power Company et al.,

v.

Pacific Gas & Electric Company.

Cause called and argued by John Quinn, counsel for appellant, and Jerome Falk, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED.